

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
Case No. 3:20-cv-00019-FDW

WILLIAM F. MACKEY,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

**DEFENDANT’S MOTION *IN LIMINE* NO.
1 TO EXCLUDE DWAYNE HARRIS AND
BRITTANY FRITZ FROM TESTIFYING
AT TRIAL**

Defendant WELLS FARGO BANK, N.A., by its attorneys and pursuant to Section 4(d) of the Court’s March 6, 2020 Case Management Order (Doc. 9), files this Motion *In Limine* No. 1 to Exclude Dwayne Harris and Brittany Fritz From Testifying at Trial. In support of its motion, Wells Fargo states as follows:

1. Mackey submitted a witness list as part of the parties’ Jointly-Proposed Pretrial Order (Doc. 24) containing two individuals, Dwayne Harris and Brittany Fritz, who were not identified in his original or supplemental Federal Rule of Civil Procedure 26 initial disclosures and whose identities were not otherwise disclosed during the discovery phase of this action.
2. On his witness list, Mackey stated that he may call Dwayne Harris and Brittany Fritz as witnesses to “establish the effect of Wells Fargo’s alleged refusal to promote and pay him equally has had on Plaintiff.” (Doc. 24 at 15.)
3. Mackey’s failure to disclose Harris and Fritz was not substantially justified or harmless. Harris and Fritz should be barred from testifying at trial under Federal Rule of Civil Procedure 37(c)(1) because: (1) Harris and Fritz were not properly identified in discovery; (2) there is no way for Mackey to cure the surprise at this stage of the action; (3) the presentation of

Harris' and Fritz's testimony would disrupt Wells Fargo's cross examination of witnesses and presentation of its rebuttal case; (4) Mackey failed to demonstrate that either witnesses is important because neither have opined that Wells Fargo's actions contributed to his health problems; and (5) Mackey has offered no explanation for the nondisclosure of Harris and Fritz.

4. Based on Mackey's failure to identify or disclose these witnesses, Wells Fargo submits that they should be excluded from testifying at trial to prevent prejudice to Wells Fargo.

WHEREFORE, Wells Fargo respectfully requests that the Court grant this motion and enter an Order barring Dwayne Harris and Brittany Fritz from testifying at trial.

Respectfully submitted,

WELLS FARGO BANK, N.A.

By: /s/ Frederick T. Smith

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Attorneys for Defendant

Date: July 5, 2021

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CERTIFICATE OF SERVICE

WELLS FARGO BANK, N.A.,

Defendant.

_____ /

I hereby certify that on July 5, 2021, I filed a true and correct copy of DEFENDANT'S MOTION *IN LIMINE* NO. 1 TO EXCLUDE DWAYNE HARRIS AND BRITTANY FRITZ FROM TESTIFYING AT TRIAL with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney of record:

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/s/ Frederick T. Smith

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